

Complaint

Mrs P complains that Moneybarn No.1 Ltd ("Moneybarn") unfairly entered into a conditional-sale agreement with her. She's said the agreement was unaffordable for her.

Background

In September 2021, Moneybarn provided Mrs P with finance for a used car. The cash price of the vehicle was £9,094.00. Mrs P didn't pay a deposit and entered into a 60-month conditional sale agreement with Moneybarn for the entire amount of her purchase.

The loan had interest, fees and total charges of £8,746.42 and the total amount to be repaid of £17,840.42 was due to be repaid in 59 monthly instalments of £302.38.

Mrs P's complaint was considered by one of our investigators. She didn't think that Moneybarn had done anything wrong or treated Mrs P unfairly. So she didn't recommend that Mrs P's complaint should be upheld.

Mrs P disagreed with our investigator's assessment and asked for her complaint to be passed to an ombudsman for a final decision.

My findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

We've explained how we handle complaints about irresponsible and unaffordable lending on our website. And I've used this approach to help me decide Mrs P's complaint.

Having carefully thought about everything I've been provided with, I'm not upholding Mrs P's complaint. I'd like to explain why in a little more detail.

Moneybarn needed to make sure that it didn't lend irresponsibly. In practice, what this means is that Moneybarn needed to carry out proportionate checks to be able to understand whether Mrs P could make her payments in a sustainable manner before agreeing to lend to her. And if the checks Moneybarn carried out weren't sufficient, I then need to consider what reasonable and proportionate checks are likely to have shown.

Our website sets out what we typically think about when deciding whether a lender's checks were proportionate. Generally, we think it's reasonable for a lender's checks to be less thorough – in terms of how much information it gathers and what it does to verify that information – in the early stages of a lending relationship.

But we might think it needed to do more if, for example, a borrower's income was low, the amount lent was high, or the information the lender had – such as a significantly impaired credit history – suggested the lender needed to know more about a prospective borrower's ability to repay.

Moneybarn says it agreed to this application after it completed an income and expenditure assessment on Mrs P. During this assessment, Mrs P provided details of her monthly income which it verified against evidence it asked her to provide. Moneybarn says it also carried out credit searches on Mrs P which showed that she had some adverse information recorded against her – in the form of defaulted accounts with the most recent of these being around two years prior to this application and a County Court Judgement (“CCJ”) which was from around five years prior to this application. It says that these difficulties were therefore historic.

Furthermore, in Moneybarn’s view, when repayments to the amount Mrs P already owed plus a reasonable amount for Mrs P’s living expenses was deducted from her monthly income the monthly payments were still affordable. On the other hand, Mrs P says she was already struggling at the time and that these payments were unaffordable.

I’ve thought about what Mrs P and Moneybarn have said.

The first thing for me to say is that bearing in mind Mrs P’s previous difficulties with credit, the amount being lent, as well as the term and total cost of the agreement, I’m satisfied that Moneybarn needed to take further steps to ascertain Mrs P’s actual living costs, rather than assuming Mrs P’s living expenses in order for its checks to have been reasonable here. Moneybarn did not do this so I’m satisfied that its checks before lending in this instance weren’t proportionate.

As Moneybarn should have done more, I’ve gone on to decide what I think Moneybarn is more likely than not to have seen had it done that here. Given the circumstances here, I would have expected Moneybarn to have had a reasonable understanding about Mrs P’s regular living expenses as well as her income and existing credit commitments.

I’ve considered the information Mrs P has provided us with. To begin with, I wish to make it clear that I’m not going to carry out a forensic analysis of Mrs P’s bank statements to establish whether the monthly payments were affordable for her. I’m simply going to try and get some idea of what Moneybarn is likely to have found out about Mrs P’s living expenses had it done proportionate checks. I also have to bear in mind that obtaining bank statements wasn’t the only way for Moneybarn to find out this information.

Having considered everything, the information provided appears to show that when Mrs P’s committed regular living expenses are combined with her credit commitments and then deducted from the funds she was receiving at the time, she did have the funds, at the time at least, to sustainably make the repayments due under this agreement.

I accept it’s possible that Mrs P’s circumstances were worse than she’d let on. For example, having looked at the bank statements there are credits which she says weren’t hers and therefore these should not have been taken into account as her income. However, in the first instance, Moneybarn won’t necessarily have known about this. And more importantly even when these credits into Mrs P’s account are excluded, the monthly payments do still appear to have been affordable for her.

So overall and having carefully considered everything, while I don’t think that Moneybarn’s checks before entering into this conditional-sale agreement with Mrs P did go far enough, I’m satisfied that doing more won’t have prevented Moneybarn from providing these funds, or entering into this agreement with her.

As this is the case, I also think it unlikely that a court would find that the relationship between Moneybarn and Mrs P was unfair to Mrs P under section 140A Consumer Credit Act 1974 – notwithstanding the fact that it did not carry out further affordability checks.

I'm therefore satisfied that Moneybarn didn't act unfairly towards Mrs P when it lent to her and I'm not upholding Mrs P's complaint. I appreciate that this will be very disappointing for Mrs P. But I hope she'll understand the reasons for my decision and that she'll at least feel her concerns have been listened to.

My final decision

My final decision is that I'm not upholding Mrs P's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 8 July 2024.

Jeshen Narayanan
Ombudsman